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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,649	03/11/2004	Robert Lee	59605US002	6327

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/798,649	LEE ET AL.	
	Examiner	Art Unit	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-24, 28-31, 36, 37 and 40-45 is/are rejected.
- 7) ☒ Claim(s) 6-10, 25, 27, 32-34, 38 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/04, 6/04, 11/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Abstract

The abstract of the disclosure is objected to because phrases that can be implied, such as "The invention includes" should not be present therein. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 1, 30 and 36 are objected to because of the following informalities: In regard to claim 1, on line 11, it appears that "and a side wall" should be deleted since the side wall of the second chamber has already been defined in the previous line. In regard to claims 30 and 36, on lines 9 and 8, respectively, it appears that "and a side wall" should be deleted since the same side wall is defined on the next line. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 11-24, 28-31, 36, 37 and 40-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. '612 (as cited by Applicant, hereinafter Lee). In regard to claims 1 and 4, Lee discloses a system comprised of a container having an outer housing 12, a first liquid 26 therein, an inner housing 16 having an aperture in a "side wall" 20 (after the wall is pierced by element 30) and a "bottom wall" 18, a second mass 28 and a foil seal 22 bonded to upper surfaces of both housings. In regard to claims 2 and 3, viewing Figure 4, the ridge between slanted surface 13a and the inner wall of housing 12 defines a stop in the form of an annular rib. In regard to claim 5, Figure 8 shows an outer skirt 52. In regard to claim 11 and 12, the first and second housings, which define the chambers, are disclosed as being made from plastic, which is considered a "flexible" material. In regard to claims 13 and 14, the second component can be liquid or solid (see the first paragraph in column 6). In regard to claim 15 the inner housing 16 is cylindrical and the aperture is "symmetrical about a radius of the cylinder". In regard to claims 16-24, an applicator 40 having a projection (the portion of element 42 just below the lip that contacts the upper surface of the inner housing) and a head (the pointed portion that extends from the projection), a tip, a shoulder and a stop member (the portion that contacts housing 12) as claimed. In regard to claims 28 and 29, the composition is disclosed as being used in a dental procedure and is hardenable. In regard to claims 30, 31, 36, 37 and 40-42, the method as claimed is inherent in the assembly and usage of the device.

Claims 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Broyles et al. (hereinafter Broyles). Broyles discloses a delivery system comprised of a container 24 having a seal 38 and an applicator having a brush tip 54 and projection 56 which will perform as claimed.

Allowable Subject Matter

Claims 6-10, 25, 27, 32-34, 38 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Shapiro reference is cited for disclosing pertinent structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
1/4/06